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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,466	04/13/2000	Mukesh Dalel	020431.0691	7441

7590 05/08/2002  
Baker Botts LLP  
2001 Ross Avenue  
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EXAMINER

KANOF, PEDRO R

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.  
09/548,466

Applicant(s)

Date

Examiner

KANOF

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 13, 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 1, 2, 5, 6, 7, 11, 15, 16, 19-21, 25, 32, 34-37, 41, 42, 46, 48-51, 55 and 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Schmidt et al. (EP 0770 967) (hereafter Schmidt).

Claims 1 and 15: Schmidt discloses a method of multi-enterprise optimization at a buyer and seller computers, comprising:

accessing a forecasted demand for at least one item (Page 3, line 25-page 4, line 8);

generating one or more proposed flexible trade contracts using the forecasted demand for the item (Page 28, lines 35-40);

communicating each proposed flexible trade contract to a seller computer (“...generates replenishment ...report...”, page 20, line 50-page 30, line 41); and

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executing a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer (“...the execution started...”, Page 30, line 43-page 32, line 38).

Claims 2 and 16: Schmidt discloses the method of Claims 1 and 15. Schmidt also explicitly discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (option contract, Page 28, lines 35-40).

Claim 5 and 19: Schmidt discloses the method of Claims 2 and 16. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (Page 81, lines 4-19, “...maximal inventory...”).

Claims 6 and 20: Schmidt discloses the method of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (Page 81, lines 20-33).

Claim 7 and 21: Schmidt discloses the method of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Claims 11 and 25: Schmidt discloses the method of Claim 1. Schmidt also discloses:

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receiving an alternate contract term from the seller computer (Col. 50, lines 45-57);  
accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (Col. 50, lines 58-60); and  
identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (Col. 50, line 60-col. 51, line 15).

Claims 32 and 46: Schmidt discloses the method of procurement of Claims 29 and 45. Schmidt also discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (Page 28, lines 35-40).

Claims 34 and 48: Schmidt discloses the method of procurement of Claims 33 and 47. Schmidt also discloses wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item (Page 81, lines 20-33).

Claims 35 and 49: Schmidt discloses the method of procurement of Claims 32 and 46. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (Page 81, lines 4-19).

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Claims 36 and 50: Schmidt discloses the method of Claims 35 and 49. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (Page 81, lines 20-33).

Claims 37 and 51: Schmidt discloses the method of Claims 35 and 49. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Claims 41, 42, 55 and 56: Schmidt discloses the procurement of Claims 29 and 45. Schmidt also discloses:

receiving an alternate contract term from the seller computer (Col. 50, lines 45-57);

accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (Col. 50, lines 58-60); and

identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (Col. 50, line 60-col. 51, line 15).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-29, 31-33, 38-40, 43, 44, 46, 47, 52-54, 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt) in view of Shepherd (U.S. Patent No. 5,970,479).

Claims 3 and 17: Schmidt discloses the method of Claims 2 and 16. However, Schmidt does not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 4 and 18: Schmidt and Shepherd disclose the method of Claims 3 and 17. However, Schmidt does not explicitly disclose wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have

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been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 8 and 22: Schmidt and Shepherd disclose the method of Claims 2 and 16 above. Shepherd discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; and a plurality of subcontracts each comprising an option, each option comprising at least one parameter selected from the group consisting of a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (Col. 49, lines 27-40 and col. 50, lines 10-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 9 and 23: Schmidt and Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.



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Claims 10 and 24: Schmidt and Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises an exercise period after the execution of the flexible forward contract during which the buyer must exercise the option (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt and Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 12 and 26: Schmidt discloses the method of Claims 1 and 15. However, Schmidt does not explicitly disclose updating the forecasted demand for the item; and exercising an option in the flexible trade contract based on the updated forecasted demand. Shepherd discloses such steps (Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 13, 14, 27 and 28: Schmidt discloses the method of Claims 1 and 15. However, Schmidt does not explicitly disclose calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer through an intermediary. Shepherd discloses such steps (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the

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time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 29 and 46: Schmidt discloses a procurement manager for multi-enterprise optimization, comprising:

a negotiation module operable to receive a forecasted demand for at least one item (Page 3, line 25-page 4, line 8), and communicate the proposed flexible trade contract to a seller computer (Page 20, line 50-page 30, line 41); and an execution module operable to execute a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer (Page 30, line 43-page 32, line 38).

However, Schmidt does not explicitly disclose generate one or more proposed flexible trade contracts using the forecasted demand for the item. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 31 and 32: Schmidt and Shepherd disclose the method of procurement of Claim 29. Schmidt also discloses wherein the negotiation module receives the forecasted demand from a user, and a forecast module operable to determine the forecasted demand (Page 82, line 11-page 83, line 20, and page 84, line 21-page 87, line 50).

Claims 33 and 47: Schmidt discloses the method of procurement of Claims 32 and 46. However, Schmidt does not explicitly disclose wherein each forward contract comprises a

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quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 38 and 52: Schmidt discloses the method of Claims 32 and 46. Schmidt also discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (Col. 96, lines 15-27). However, Schmidt does not explicitly disclose a plurality of subcontracts each comprising an option, each option comprising at least one parameter. Shepherd discloses such as a step (Col. 49, lines 27-col. 50, line 27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt method.

Claims 39 and 53: Schmidt and Shepherd disclose the procurement manager of Claims 38 and 52. Schmidt also discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (Page 66, line 18-page 67, line 50).

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Claims 40 and 54: Schmidt and Shepherd disclose the procurement manager of Claims 38 and 52. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (Page 81, line 34-page 82, line 32).

Claims 43, 44, 57 and 58: Schmidt discloses the method of procurement of Claims 29 and 45. further comprising a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. However, Schmidt does not explicitly disclose tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract nor a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. Shepherd discloses such steps (Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. Pedro R. Kanof whose telephone number is (703) 308-9552. The examiner can normally be reached on weekdays from 7:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Vincent Millin, can be reached on (703) 308-1065. The fax phone numbers for this Group are: Customer Service (703) 872-9325, Before Final (703) 872-9326, and After Final (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

PRK-5/3//02.

*FT*  
FRANTZY POINTEL  
PRIMARY EXAMINER

*du 3628*